

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 96-80

In the Matter of

Amendment of Section 73.202(b).

RM-8758

Table of Allotments,
FM Broadcast Stations.
(Deerfield, Missouri)

NOTICE OF PROPOSED RULE MAKING

Adopted: March 27, 1996;

Released: April 18, 1996

Comment Date: June 10, 1996

Reply Comment Date: June 25, 1996

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Dale Hendrix ("petitioner") requesting the allotment of Channel 261C3 to Deerfield, Missouri, as that community's first local service.¹ Petitioner submitted information in support of the proposal and indicated his intention to file an application for Channel 263C1 at Deerfield.²

2. We believe the proposal warrants consideration because the proposed allotment would provide a first local service to Deerfield, Missouri. A staff engineering analysis indicates Channel 261C3 can be allotted to Deerfield consistent with the minimum distance separation requirements of the Commission's rules provided there is a site restriction 1.8 kilometers (1.1 miles) southeast of the community.³ The site restriction will prevent a conflict with Station KDVV, Channel 262C, Topeka, Kansas.

3. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "...among the several states and communities." The Commission has defined "communities" as geographically identifiable population groups. Generally, if a community is incorporated or listed in the U.S. census, that is sufficient to satisfy its status. Absent such recognizable community

facts, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic, or cultural indicia to qualify it as a community for allotment purposes. See, e.g., *Oak Grove, FL*, 5 FCC Rcd 3774 (1990); *Hannibal, OH*, 5 FCC Rcd 3315 (1990); and *Statenville, GA* 5 FCC Rcd 2685 (1990). We do recognize that Deerfield is incorporated, has a post office and its own zip code, meeting the basic criteria for community status. Further, the 1995 *Rand McNally Commercial Atlas* indicates a population of 85 people. However, we may find that a population grouping of 85 people does not constitute a community for allotment purposes where the community may be devoid of the customary factors associated with determining community status, such as a library, schools, shopping centers, churches, a newspaper and social or civic organizations and some form of government. See *Searles Valley, CA*, 3 FCC Rcd 5221 (1988); see also, *Naples, FL*, 41 RR ed 1549 (1977). Therefore, petitioner is requested to submit information regarding Deerfield to demonstrate whether it has any commercial establishments, social, economic, cultural or religious organizations, municipal services, or governmental units that identify themselves specifically with Deerfield.

4. In view of the fact that the proposed allotment would provide a first local service to Deerfield, the Commission believes it would serve the public interest to solicit comments on the proposal to amend the FM Table of Allotments, section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Deerfield, Missouri	---	261C3

5. IT IS ORDERED, That the Secretary of the Commission Shall Send by Certified Mail, Return Receipt Requested, a copy of this Notice of Proposed Rule Making to the following:

KHST Broadcasting Company
Rt. 1, Box 724
Bolivar, Missouri 65613

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we

¹ This petition was originally filed as a counterproposal in MM Docket No. 95-179 (10 FCC Rcd 11378 (1995)). However, since the proposed allotment at Deerfield is not in conflict with the communities in Docket 95-179, we have denied its acceptance in that proceeding and accepted the proposal as a new rulemaking petition.

² Although petitioner's request indicates that the original copy of his proposal was signed, he failed to include an affidavit verifying that the statements contained in his petition were accurate to best of his knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel shall be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be

dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, n.41 (1990). Petitioner is requested to rectify this omission in his comments.

³ The coordinates for Channel 261C3 at Deerfield are 37-49-41 and 94-29-32. We do note that Channel 261C3 is short spaced to Station KHST, Channel 260A, Lamar, Missouri. However, the license for Station KHST was amended to specify operation on Channel 269A in MM Docket No. 94-151. See 10 FCC Rcd 6526 (1995). We will serve Station KHST with a copy of this Notice.

note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **June 10, 1996**, and reply comments on or before **June 25, 1996**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Dale Hendrix
872 Allen Road
Murfreesboro, Tennessee 37129

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Com-

mission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.